

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

KENNETH B. WHITE, PRO SE v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Wayne County
No. 13161 Robert Holloway, Judge**

No. M2003-02833-CCA-R3-HC - Filed October 26, 2004

The Petitioner, Kenneth B. White, appeals the trial court's denial of his petition for habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. After a review of the record, this court determines that petitioner's claims must fail. Petitioner has failed to present any evidence that his sentence has expired or that his conviction for vehicular homicide by intoxication is void. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed Pursuant to Rule 20, Rules of
the Court of Criminal Appeals**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and, JERRY L. SMITH, JJ., joined.

Kenneth B. White, pro se.

Paul G. Summers, Attorney General & Reporter; Helena Walton Yarbrough, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On March 17, 1999, Petitioner was convicted by a Shelby County jury of vehicular homicide by intoxication. Petitioner was sentenced to twelve years, as a standard Range I offender. Petitioner filed, *pro se*, a petition for writ of habeas corpus relief, alleging that his conviction for vehicular homicide was void because the indictment lacked the signature of the trial court clerk, the judgment lacked the signature of the trial court clerk, and the judgment did not run in the name of the State of Tennessee. The court dismissed the petition on October 16, 2003. Petitioner timely filed a notice of appeal.

Article I, Section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief and Tennessee Code Annotated Sections 29-21-101 *et seq.* codify the applicable procedures for seeking a writ. However, the grounds upon which our law provides relief are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 222 Tenn. 50, 432 S.W.2d 656 (1968); State ex rel. Wade v. Norvell, 1 Tenn. Crim. App. 447, 443 S.W.2d 839 (1969). Moreover, habeas corpus relief is available in this state only when it appears on the face of the judgment or the record that the trial court was without jurisdiction to convict or sentence the defendant or that the sentence of imprisonment has otherwise expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). There is no contention that Petitioner's sentence has expired.

Petitioner has alleged that his conviction for vehicular homicide by intoxication is void because the clerk failed to sign the indictment and judgment and the judgment did not run in the name of the State of Tennessee. The signature of the clerk on an indictment is a procedural, rather than substantive, safeguard. Therefore, an objection to a defect of this nature must be made pre-trial, and not in a collateral, post-trial habeas corpus petition. See Tenn. R. Crim. P. 12(b)(2); Marvin Anthony Matthews v. State, No. W2003-00106-CCA-R3-CO, 2003 WL 23100812, *2 (Tenn. Crim. App., Jackson, Dec. 31, 2003); Nelson B. Graves v. Howard Carlton, Warden, No. 03C01-9705-CR-00171, 1998 WL 133840, *2 (Tenn. Crim. App., Knoxville, Mar. 25, 1998), *perm. app. denied*, (Tenn. 1998).

Likewise, Petitioner's arguments that his conviction is void because the judgment was not signed by the clerk and did not run in the name of the State of Tennessee must also fail. Petitioner argues that Tennessee Constitution Article VI, Section 12 requires judgments to run in the name of the State of Tennessee and to be signed by the clerk of the court. Tennessee Constitution Article VI, Section 12 reads as follows: “**Requisites of writs and process.** — All writs and other process shall run in the name of the State of Tennessee and bear test and be signed by the respective clerks. Indictments shall conclude, ‘against the peace and dignity of the State.’” TENN. CONST. Art. VI, § 12. As the title of this section indicates, this section is only applicable to writs and other process. A writ is a “court’s written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified acts.” BLACK’S LAW DICTIONARY(7th ed. 1999). The judicial process referenced in Article VI, Section 12 is “original process.” Original process is the “means of compelling a defendant to appear in the court after suing out the original writ in civil, and after the indictment in criminal cases.” White v. State, 50 Tenn. (3 Heisk.) 338, 1872 WL 3714, * 1 (Tenn. 1872). As our Supreme Court has explained, judicial process is the process by which a court obtains jurisdiction. State, Dep’t of Revenue v. Moore, 722 S.W.2d 367, 370 (Tenn. 1986). A judgment is final process as opposed to the original process referenced in the section of the Constitution at issue. See White v. State, 1872 WL 3714, * 1. A judgment is not a writ or process as

contemplated by Article VI, Section 12 of the Tennessee Constitution. Accordingly, the form of a judgment is not dictated by Article VI, Section 12 of the Constitution.

Moreover, the judgment in this case complied with the requirements set forth in Tennessee Code Annotated Section 40-35-209(f), Rule 32(e) of the Tennessee Rules of Criminal Procedure and Supreme Court Rule 17. Tennessee Code Annotated Section 40-35-209(f) provides that the Supreme Court shall promulgate a uniform judgment form for use by trial court judges. The Supreme Court has promulgated the uniform judgment form contemplated by Tennessee Code Annotated Section 40-35-209(f), and the requirements for the judgment form, as well as a copy of the form, are set forth in Supreme Court Rule 17. The trial court used the required judgment form in this case. Moreover, Rule 32(e) of the Tennessee Rules of Criminal Procedure provides that, "A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence.... The judgment shall be signed by the judge and entered by the clerk." The judgment in this case also complies with Rule 32(e) of the Rules of Criminal Procedure. Petitioner's argument that the judgment is void because it was not signed by the clerk and did not run in the name of the State of Tennessee is without merit.

Petitioner has failed to present any evidence that his sentence has expired or that his conviction for vehicular homicide by intoxication is void. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE